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Mr. William F. Caton
Acting Secretary
Office of the Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

Re: Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; CC Docket No. 96-98; Notice of Proposed Rulemaking adopted April 19, 1996 ("NPRM")

Reply Comments on Access to Rights-of-Way (NPRM ¶¶220-225)

Dear Mr. Caton:

We are submitting the following Reply Comments in the above-referenced docket on behalf of Carolina Power & Light ("CP&L"), an investor-owned utility serving 1.1 million customers in North Carolina and South Carolina. CP&L submitted Initial Comments in this matter that generally were consistent with the Joint Comments submitted by UTC, the Telecommunications Association, and the Edison Electric Institute ("EEI") as well as with the Joint Comments of a group of seventeen electric utilities collectively known as the "Infrastructure Owners."

In these Comments, CP&L wishes to endorse and commend to the Commission the Reply Comments submitted by UTC/EEI and the Infrastructure Owners. In addition, for purposes of emphasis, CP&L makes the following observations that it believes the Commission should take into account in the formulation of policies to address the pole access and written notification issues raised by Paragraphs 220-225 of the Commission's Interconnection NPRM:

- In the NPRM, the Commission has an important opportunity to clarify a point of deep concern to public utilities and private property owners. Electric utilities, through negotiation (and often at considerable cost), obtain access to rights-of-way or easements under the express condition that the property of the grantor will be used only to provide electric service. To the extent that cable operators and telecommunication providers wish to obtain similar access, they have the obligation to negotiate and obtain separately the right to burden a landowner's property. Unfortunately, on occasion, some cable operators and other users have attempted through false statements to landowners to "bootstrap" a right to use the owner's property by referencing the agreement between the utility and the landowner. Such practices are wrong as both a matter of law and ethics, and the Commission should articulate that the term "right-of-way" under the 1996 Act means only the public rights-of-way historically granted by franchising authorities to public utilities and, more specifically, that the term does not extend to private easements acquired by utilities through negotiation with private parties.

- As suggested by many initial commenters, CP&L agrees that the allocation of space on poles should be subject to negotiation between the parties based upon an application of reasonable terms and conditions. Existing joint use agreements and pole access agreements provide a ready example of the willingness and ability of parties to enter into agreements that fairly and efficiently allocate space on existing and new poles. Thus, those agreements should serve as the basis for the continuation of existing agreements as well as the model for the negotiation of new agreements.

- CP&L believes that it is imperative that the Commission, under 47 U.S.C. § 224(h), recognizes the critical role that electricity service has in our society and, thus, reflects that fact in imposing any written notification requirement upon an owner who intends to modify its pole, duct, conduit or right-of-way. Accordingly, the Commission, at a minimum, should recognize three specific exceptions to a requirement that a utility provide advance notification to other pole users -- meeting emergency situations, meeting public service requirements and effecting necessary pole maintenance.

- While the range of periods suggested by commenters for the provision of written notification of an intent to undertake work on a pole, duct, conduit or right-of-way varied substantially (from days to as long as a year), CP&L would suggest that the Commission look for guidance in this area to the requirements imposed on utilities with respect to calls from those

intent on constructing in or around utility facilities. Laws with respect to utility objections to such activities generally provide for between forty-eight and seventy-two hours notice. If a minimum period were considered necessary, the Commission could establish similar guidelines for utilities intent on modifying facilities of interest to third parties. There is no basis for the Commission to assume that decisions pertaining to the configuration of facilities represent major decisions in the corporate life of entities that routinely must monitor system configuration and construction needs.

- Upon further reflection, CP&L believes that other commenters have determined the appropriate basis for sharing modification, rearrangement, and replacement costs. Thus, CP&L agrees with the Reply Comments of the Infrastructure Owners when they state, "... costs [should] be divided equally among the entities (including the utility, if applicable) which elect to add to or modify their attachments."

Again, with these additional points of emphasis, CP&L respectfully commends to the Commission the submissions of UTC/EEI and the Infrastructure Owners and urges the Commission to adopt the views expressed therein in any final Rule.

Sincerely,

Karl R. Moor

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cc: D. Glosson
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